

**FILED ELECTRONICALLY**

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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA  
HARRISBURG DIVISION

JANINE WENZIG and CATHERINE  
KIOUSSIS,

Plaintiffs,

v.

SERVICE EMPLOYEES UNION LOCAL  
668,

Defendant.

CASE NO.: 1:19-cv-01367-MEM

**DEFENDANT SEIU LOCAL 668'S  
MOTION TO DISMISS  
PLAINTIFFS' FIRST AMENDED  
COMPLAINT**

Hon. Malachy E. Mannion

FAC Filed: Oct. 28, 2019  
Trial Date: Not set.

Defendant Service Employees International Union Local 668 (“Local 668”), by its undersigned counsel, respectfully moves the Court to dismiss plaintiffs’ claim against Local 668 for retrospective monetary relief under 42 U.S.C. §1983—the sole claim asserted in plaintiffs’ First Amended Complaint—pursuant to Fed. R. Civ. P. 12(b)(6). Plaintiffs’ claim must be dismissed for failure to state a claim because a private party like Local 668 that relied in good faith on then-valid state law that is subsequently held unconstitutional is not liable for retrospective monetary relief under §1983. At the time Local 668 received the fair-share fee payments at issue here, fair-share fee requirements were both authorized by Pennsylvania law and constitutional under controlling U.S. Supreme Court precedent. As every court to consider such a claim has held, unions that received those fees, including Local 668, are entitled to assert a good faith defense to retrospective §1983 liability as a matter of law.

Local 668’s motion is based upon this motion; the memorandum of points and authorities and proposed order in support thereof; such further pleadings as may be filed in connection with this motion; and the complete files and records of the Court in this matter.

The undersigned counsel certifies, pursuant to Middle District Local Rule 7.1, that Local 668 has sought plaintiffs’ concurrence in this motion, which has been denied.

Date: November 5, 2019

Respectfully Submitted,

/s/P. Casey Pitts

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